

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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JIANGMEN KINWAI FURNITURE
DECORATION CO. LTD, KINWAI USA INC.,

Plaintiff(s),

v.

INTERNATIONAL MARKET CENTERS,
INC., et al.,

Defendant(s).

Case No. 2:15-CV-1419 JCM (PAL)

ORDER

Presently before the court is a motion for attorney's fees and costs filed by defendants International Market Centers, Inc., International Market Centers, LP, IMC Manager LLC, IMC OP, LP, IMC OP GP, LLC, International Market Centers GP, LLC and WMCV Phase 2 LLC (collectively, as "defendants"). (ECF Nos. 45). Plaintiffs Jiangmen Kinwai Furniture Decoration Co. LTD ("Jiangmen") and Kinwai USA Inc. ("Kinwai" and collectively with Jiangmen, as "plaintiffs") filed a response (ECF No. 54), to which defendants replied (ECF No. 56).

I. Facts

In October 2012, plaintiff Jiangmen and IHFC Properties entered into a lease for showroom space in High Point, North Carolina (the "High Point lease"). (ECF No. 33). Jiangmen manufactures and sells furniture and entered into the High Point lease to participate in the High Point Furniture Market, the largest furnishings trade show in the world. (ECF No. 33).

In the instant action, plaintiffs claim IHFC Properties, LLC breached its lease in August 2014 when it relocated Jiangmen to a different showroom prior to the fall 2014 furniture show. (ECF No. 27). Plaintiffs also allege that defendants did not provide Jiangmen adequate time to

1 refit the new showroom and that Jiangmen's furniture was damaged during transport to the new
2 showroom location. (ECF No. 27). Plaintiffs further allege that defendants' actions were
3 motivated by a desire to benefit Jiangmen's competitor, Zuo Modern Contemporary, Inc. (ECF
4 No. 27).

5 The High Point lease is currently under dispute and being litigated in the U.S. District Court
6 for the Middle District of North Carolina in the matter of *Jiangmen Kinwai Furniture v. IHFC*
7 *Properties et al.*, case no. 1:14-CV-00689 (M.D.N.C. Aug. 14, 2014) (the "North Carolina
8 action"). Jiangmen moved to amend its complaint in the North Carolina action to include
9 additional facts and to join International Market Centers, LP and International Market Centers,
10 Inc. as defendants. (See ECF No. 33, Exh. C). The North Carolina court granted Jiangmen's
11 request to add additional facts, but denied the joinder of the IHFC affiliated entities as defendants,
12 finding that Jiangmen failed to adequately state a claim for liability or show that the affiliates
13 committed any of the alleged torts. (ECF No. 33, Exh. E). Jiangmen ignored the North Carolina
14 court's orders and filed the amended complaint with additional defendants, which was later struck
15 from the record. (ECF No. 33, Exh. G).

16 Several of Jiangmen's litigation tactics have come under fire in the North Carolina action.
17 (ECF No. 33). Jiangmen sought discovery regarding the IHFC properties that plaintiffs are again
18 suing in this case. During the discovery process, the North Carolina court found that Jiangmen
19 was acting in bad faith with the purpose of harassing the IHFC properties. (ECF No. 33, Exh. I).

20 The North Carolina court granted summary judgment in favor of the IHFC properties
21 finding that the IHFC properties did not breach the terms of the High Point lease when it relocated
22 Jiangmen to a different showroom. (ECF No. 38, Exh. L). Summary judgment was also entered
23 in the IHFC properties favor on Jiangmen's claims for constructive eviction, breach of the duty of
24 good faith and fair dealing, violation of North Carolina's Unfair and Deceptive Trade Practices
25 Act, and civil conspiracy. (ECF No. 38, Exh. L).

26 Independent of the High Point lease dispute, plaintiffs also assert two claims against World
27 Market Center and its affiliates. Plaintiff Kinwai, an affiliate of Jiangmen, entered into a lease for
28 space in the World Market Center in Las Vegas, Nevada (the "Las Vegas lease"). The Las Vegas

1 lease was between Kinwai and WMCV Phase 2, LLC (“WCMV”). (ECF No. 27). Plaintiffs allege
 2 that WCMV refused to renew its lease with Kinwai because of the pending North Carolina
 3 litigation and thus engaged in unfair and deceptive trade practices and breached the covenant of
 4 good faith and fair dealing. (ECF No. 27).

5 Based on the foregoing, defendants filed a motion to dismiss or, in the alternative, motion
 6 to transfer venue. (ECF No. 33). The court granted defendants’ motion and entered judgment in
 7 their favor on February 18, 2016. (ECF Nos. 43, 44).

8 Subsequently, on March 18, 2016, plaintiffs filed a motion to amend or correct the February
 9 18th order and judgment (ECF No. 49), followed by a notice of appeal two days later (ECF No.
 10 50). The court subsequently denied plaintiffs’ motion to amend or correct the order and judgment.
 11 (ECF No. 61). The appeal is currently pending before the Ninth Circuit. (*See* ECF Nos. 65, 66).

12 On March 3, 2016, defendants filed the instant motion requesting attorney’s fees and costs
 13 pursuant to Federal Rule of Civil Procedure 54(d) and Nevada Revised Statute § 18.010(2). (ECF
 14 No. 45).

15 **II. Legal Standard**

16 Under the “American Rule,” litigants generally must pay their own attorney’s fees in
 17 absence of a rule, statute, or contract authorizing such an award. *See Alyeska Pipeline Co. v.*
 18 *Wilderness Soc’y*, 421 U.S. 240, 247 (1975); *MRO Commc’ns, Inc. v. Am. Tel. & Tel. Co.*, 197
 19 F.3d 1276, 1280–81 (9th Cir. 1999). Nonetheless, the decision to award attorney’s fees is left to
 20 the sound discretion of the district court. *Flamingo Realty, Inc. v. Midwest Dev., Inc.*, 879 P.2d
 21 69, 73 (Nev. 1994).

22 “In an action involving state law claims, we apply the law of the forum state to determine
 23 whether a party is entitled to attorneys’ fees, unless it conflicts with a valid federal statute or
 24 procedural rule.” *MRO Commc’ns, Inc. v. Am. Tel. & Tel. Co.*, 197 F.3d 1276, 1282 (9th Cir.
 25 1999); *see also Alyeska Pipeline Serv. Co.*, 421 U.S. at 259 n.31. Under Nevada law, attorney’s
 26 fees are available only when “authorized by rule, statute, or contract.” *Flamingo Realty, Inc.*, 879
 27 P.2d at 73; Nev. Rev. Stat. § 18.010.

Although state law governs whether a party is entitled to attorney's fees, federal law dictates the procedure for requesting attorney's fees. *Carnes v. Zamani*, 488 F.3d 1057, 1059 (9th Cir. 2007); *see also MRO Commc'ns, Inc. v. Am. Tel. & Tel. Co.*, 197 F.3d 1276, 1280–81 (9th Cir. 1999) (explaining that Rule 54(d)(2) creates a procedure to request attorney's fees, not a right to recover attorney's fees). Federal Rule of Civil Procedure 54(d) governs requests for attorney's fees and nontaxable costs.

Under Rule 54(d), a prevailing party seeking fees must: (i) file the motion no later than 14 days after the entry of judgment; (ii) specify the judgment and the statute, rule, or other grounds entitling the movant to the award; (iii) state the amount sought or provide a fair estimate of it; and (iv) disclose, if the court so orders, the terms of any agreement about fees for the services for which the claim is made. Fed. R. Civ. P. 54(d)(2).

Further, Local Rule 54-16 provides additional requirements for motions for attorney's fees. LR 54-16(b). Under Local Rule 54-16(b), a motion for attorney's fees and costs must also include the following components:

1. A reasonable itemization and description of the work performed;
2. An itemization of all costs sought to be charged as part of the fee award and not otherwise taxable pursuant to LR 54-1 through 54-15;
3. A brief summary of the following:
 - A. The results obtained and the amount involved;
 - B. The time and labor required;
 - C. The novelty and difficulty of the questions involved;
 - D. The skill requisite to perform the legal service properly;
 - E. The preclusion of other employment by the attorney due to acceptance of the case;
 - F. The customary fee;
 - G. Whether the fee is fixed or contingent;
 - H. The time limitations imposed by the client or the circumstances;
 - I. The experience, reputation, and ability of the attorney(s);
 - J. The undesirability of the case, if any;
 - K. The nature and length of the professional relationship with the client;
 - L. Awards in similar cases; and,
4. Such other information as the Court may direct.

LR 54-16(b).

Moreover, a motion for attorney's fees and costs must be accompanied by an affidavit from the attorney responsible for the billings in the case to authenticate the information contained in the motion, and to prove that the fees and costs sought are reasonable. LR 54-16(c). A failure to

1 provide the documentation required by LR 54-16(b) and (c) in a motion for attorney's fees
2 "constitutes a consent to the denial of the motion." LR 54-16(d).

3 With respect to costs, a prevailing party is entitled to nontaxable costs and expenses unless
4 a federal statute or court order provides otherwise. Fed. R. Civ. P. 54(d)(1); LR 54-1. The movant
5 must itemize "all costs sought to be charged as part of the fee award and not otherwise taxable
6 pursuant to LR 54-1 through 54-15." LR 54-16(b)(2).

7 **III. Discussion**

8 In the instant motion, defendants request attorney's fees in the amount of \$48,516.00 and
9 costs in the amount of \$1,471.83. (ECF No. 45).¹ Defendants assert that they prevailed on
10 plaintiffs' claims for intentional interference with prospective economic advantage and breach of
11 good faith and fair dealing. (ECF No. 45 at 6). Defendants argue that, as the prevailing party,
12 they are entitled to attorney's fees and costs pursuant to Rule 54(d) and NRS 18.010(2). (ECF No.
13 45).

14 Under Nevada law, attorney's fees are available only when "authorized by rule, statute, or
15 contract." *Flamingo Realty, Inc.*, 879 P.2d at 73; Nev. Rev. Stat. § 18.010. Section 18.010 of the
16 Nevada Revised Statutes provides, in relevant part:

17 1. The compensation of an attorney and counselor for his or her services is governed
18 by agreement, express or implied, which is not restrained by law.

19 2. In addition to the cases where an allowance is authorized by specific statute, the
20 court may make an allowance of attorney's fees to a prevailing party:

21 (a) When the prevailing party has not recovered more than \$20,000; or

22 (b) Without regard to the recovery sought, when the court finds that the claim,
23 counterclaim, cross-claim or third-party complaint or defense of the opposing

24 ¹ On March 8, 2016, defendants filed an erratum to their motion for attorney's fees,
25 wherein defendants request that the court strike the redacted version of Exhibit A to the Kara
26 Hendricks affidavit that was inadvertently filed with their motion for attorney's fees (ECF No. 45,
27 Exh. A) and replace it with the redacted version of Exhibit A attached to their errata (ECF No. 47,
28 Exh. A). The court construes defendants' "errata" as a motion to amend/correct their motion for
attorney's fees and will grant defendants' motion to amend/correct. However, future filings that
fail to comply with the Local Rules and the Federal Rules of Civil Procedure will be stricken. *See*
Ready Transp., Inc. v. AAR Mfg., Inc., 627 F.3d 402, 404 (9th Cir. 2010) (holding that district
courts have inherent power to control their own dockets); LR IC 7-1 ("The court may strike
documents that do not comply with these rules."); *see also* Fed. R. Civ. P. 7, 15; LR 15-1; LR IC
2-2(b).

1 party was brought or maintained without reasonable ground or to harass the
2 prevailing party. . .

3 3. In awarding attorney's fees, the court may pronounce its decision on the fees at
4 the conclusion of the trial or special proceeding without written motion and with or
5 without presentation of additional evidence.

6 4. Subsections 2 and 3 do not apply to any action arising out of a written instrument
7 or agreement which entitles the prevailing party to an award of reasonable
8 attorney's fees.

9 Nev. Rev. Stat. § 18.010.

10 Defendants contend that plaintiffs had no reasonable grounds to file suit in Nevada and it
11 appears that they did so as a willful attempt to avoid the North Carolina rulings. (ECF No. 45 at
12 6).

13 The court disagrees. Under Nevada law, a claim is groundless if "the allegations in the
14 complaint . . . are not supported by any credible evidence at trial." *Allianz Ins. Co. v. Gagnon*, 860
15 P.2d 720, 724 (Nev. 1993) (citation omitted). Here, the case did not proceed to trial. Rather, the
16 instant case was resolved pursuant to an order granting defendants' Rule 12(b)(6) motion to
17 dismiss. Because no contract, rule, or statute authorizes attorney's fees otherwise, the court will
18 deny defendants' motion for attorney's fees and costs.

19 **IV. Conclusion**

20 Accordingly,

21 IT IS HEREBY ORDERED, ADJUDGED, and DECREED that defendants' motion for
22 attorney's fees and costs be, and the same hereby is, DENIED.

23 DATED November 8, 2016.

24 
25 UNITED STATES DISTRICT JUDGE
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